

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter)	CUID Nos.	CA 1087 (Galt)
)		CA 1088 (Sacramento County)
Sacramento Cable Television Company)		CA 1089 (Sacramento)
)		CA 1092 (Folsom)
Petition for Reconsideration)		

ORDER ON RECONSIDERATION

Adopted: February 22, 2002

Released: February 26, 2002

By the Deputy Chief, Cable Services Bureau:

1. In this Order we consider a petition for reconsideration ("Petition") of our Order, DA 96-1607 ("Prior Order"),¹ filed on October 24, 1996 with the Federal Communications Commission ("Commission") by the Sacramento Metropolitan Cable Television Commission, the local franchising authority ("LFA") for the above-referenced communities. In our Prior Order, we resolved complaints against the above-referenced Operator's cable programming services tier ("CPST") rates in effect after May 14, 1994, and found Operator's CPST rates to be reasonable. An *erratum* to the Prior Order was issued on November 1, 1996. The LFA filed an application for review ("Application") on November 29, 1996, under the mistaken belief that the *erratum* was a resolution of the LFA's Petition. The LFA requested that its Application be dismissed if the Petition was still pending. Because the Petition was still pending and was not addressed by the *erratum* to our Prior Order, we will dismiss the LFA's Application. In this Order, we will also dismiss Operator's Petition because a resolution of Operator's Petition would have no effect on Operator's refund liability.

2. Under the Communications Act,² the Commission is authorized to review the CPST rates of cable systems not subject to effective competition to ensure that rates charged are not unreasonable. The Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"),³ in effect at the time the complaints were filed, required the Commission to review CPST rates upon the filing of a valid complaint by a subscriber. The filing of a valid complaint triggers an obligation upon the cable operator to file a justification of its CPST rates.⁴ If the Commission finds the rate to be unreasonable, it shall determine the correct rate and any refund liability.⁵

¹ See In the Matter of Sacramento Cable Television Company, DA 96-1607, 11 FCC Rcd 11886 (1996); *erratum*, 11 FCC 14486 (1996).

² Communications Act, Section 623(c), as amended, 47 U.S.C. §543(c) (1996).

³ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁴ 47 C.F.R. §76.956.

⁵ 47 C.F.R. §76.957.

3. Section 623(c) of the Communications Act,⁶ which establishes the criteria for Commission regulation of the cable programming service tier, does not apply to cable programming services provided after March 31, 1999.⁷ The Commission does not have authority to review CPST rates which became effective after March 31, 1999. Since 1993, the Commission has been receiving and resolving complaints from subscribers and LFA's regarding CPST rates. Although the Commission has resolved almost 18,000 complaints involving 5,700 communities during that time frame, there are still complaints that are pending and need to be resolved. In addition to the pending complaints, there are a number of pending petitions for reconsideration of prior orders. Most of these prior orders that are the subject of a pending appeal determined that a cable system operator had incurred refund liability for overcharges on its CPST. Several petitions are against prior orders which found that the operator did not incur any refund liability, either because its CPST rate was found to be reasonable or because the total amount of the refund was *de minimis* and it would not have been in the public interest to order a refund.

4. It would not be a judicious use of Commission resources to attempt to resolve appeals of CPST rate orders that could not affect the petitioner's status. For example, if resolution of the appeal would not change the actual refund liability incurred by the operator. Resolution of such appeals will have no consequences other than to put additional strain on limited Commission resources which are better put to resolving pending complaints and appeals of orders which involve potential or actual changes in refund liability. Therefore, we have determined that appeals of CPST rate orders which do not involve changes in actual refund liability will be dismissed because there is no real relief which may be granted through resolution of the appeal.

5. In its Petition, the LFA argues that Operator used an incorrect entry for the average number of rental remote control units on Line C7 of its FCC Form 1200. Our review of the record indicates that a substitution of the LFA's proposed number in place of the Operator's number would have no effect on Operator's refund liability for its CPST. Operator's actual CPST charges would still be reasonable. Therefore, in order to conserve Commission resources, we will dismiss the LFA's Petition without addressing the merits of the LFA's arguments.

6. Accordingly, IT IS ORDERED, pursuant to Sections 0.321 and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.321 and 1.106, that Operator's Petition for Reconsideration and Application for Review ARE DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief
Cable Services Bureau

⁶ 47 U.S.C. § 543(c).

⁷ See 47 U.S.C. § 543(c)(4) (1996).